

Pro Se 5 (Rev. 12/16) Complaint for a Civil Case Alleging Negligence

UNITED STATES DISTRICT COURT

for the

Western District of Pennsylvania

Civil Division

James J. Durkin

Case No.

2:22cv 780

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Pennsylvania Department of Labor and Industry

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Jury Trial: (check one)

☐

Yes

☒

No

FILED

MAY 27 2022

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA**COMPLAINT FOR A CIVIL CASE ALLEGING NEGLIGENCE**

(28 U.S.C. § 1332; Diversity of Citizenship)

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	James Durkin
Street Address	37 Orchard Spring Rd.
City and County	Pittsburgh
State and Zip Code	Penna. 15220
Telephone Number	412-344-1316
E-mail Address	jimdrkn@msn.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	Pennsylvania Department of Labor and Industry
Job or Title <i>(if known)</i>	
Street Address	301 5th Ave.
City and County	Pittsburgh
State and Zip Code	Penna. 15222
Telephone Number	717-772-4447
E-mail Address <i>(if known)</i>	

Defendant No. 2

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

Defendant No. 3

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

Defendant No. 4

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Under 28 U.S.C. § 1332, federal courts may hear cases in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000. In that kind of case, called a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff. Explain how these jurisdictional requirements have been met.

A. The Plaintiff(s)

1. If the plaintiff is an individual

The plaintiff, (name) James Durkin, is a citizen of the
State of (name) Pennsylvania.

2. If the plaintiff is a corporation

The plaintiff, (name) _____, is incorporated
under the laws of the State of (name) _____,
and has its principal place of business in the State of (name) _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

B. The Defendant(s)

1. If the defendant is an individual

The defendant, (name) Pennsylvania Department of Labor and Industry, is a citizen of
the State of (name) _____. Or is a citizen of
(foreign nation) _____.

2. If the defendant is a corporation

The defendant, (name) _____, is incorporated under
the laws of the State of (name) _____, and has its
principal place of business in the State of (name) _____.
Or is incorporated under the laws of (foreign nation) _____,
and has its principal place of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

C. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because (explain):

\$9464.00 Plus costs and Filing Fees.

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

On *(date)* 05/04/2022, at *(place)* Pittsburgh, PA,

the defendant(s): (1) performed acts that a person of ordinary prudence in the same or similar circumstances would not have done; or (2) failed to perform acts that a person of ordinary prudence would have done under the same or similar circumstances because *(describe the acts or failures to act and why they were negligent)*

Despite James Durkin providing overwhelming evidence of the PA Department of Labor and Industry's numerous instances of neglect and denial of an Unemployment Claim due to injury on the job and despite providing the same overwhelming evidence to more than 3 other Pennsylvania Offices and Courts, he has been repeatedly denied his rights under existing laws, culminated by a PA Judge dismissing his case under claims of Conflict of Interest in a State Court.

The acts or omissions caused or contributed to the cause of the plaintiff's injuries by *(explain)*

Denying him monies legally due to him under PA State Unemployment Laws and Federal CARES act funding.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

\$9464.00 as tabulated by the Department of Labor and Industry's website in 2021. Plus more than one years interest. Plus all filing Costs accrued so far, in excess of \$750.00 for both State and Federal filings.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

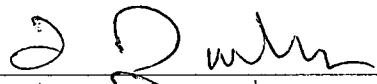
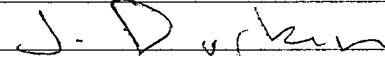
A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 05/07/2022

Signature of Plaintiff

Printed Name of Plaintiff

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address

UNITED STATES DISTRICT COURT

For the

Western District of Pennsylvania

Civil Division

COMPLAINT

IN THE YEAR OF OUR LORD, MAY 20TH, 2022...

1. And so comes James J. Durkin, Plaintiff (hereinafter referred to as “Durkin”) with charges against his beloved Commonwealth of Pennsylvania, claiming mismanagement of his rights to Unemployment Compensation through The Pennsylvania Department of Labor and Industry, (hereinafter referred to as “The Department” or “Department”) and it’s Secretary Jennifer Berrier which continually denies him access to funds due to him under Unemployment Compensation Law with the claim that he is ineligible for those benefits.
2. Durkin was employed for more than a year Full Time by Flynn’s Tire Wholesale, A Pennsylvania Corporation and a Division of Flynn’s Automotive Group as a Delivery Driver.
3. On January 8th, 2021 Durkin did not attend work due to physical inability to perform functions and duties required by him in order to complete tasks required of him as condition of his employment and was fired from the position two days later, without Flynn’s Tire Wholesale contacting him to inform him of so.
4. On January 14th Durkin was deemed “Unable to work until further Notice” by his Primary Care Physician (hereinafter referred to as “PCP”) a Medical Practice he had attended for more than 10 years, after extensive X-rays and other examinations and filed for Unemployment benefits with the Department Electronically the next day.
5. Durkin was Unemployed for more than two months and filed for Unemployment benefits as required during this time period as required by The Department but received no compensation whatsoever despite providing corroborating evidence contained as evidence in this Lawsuit of his inability to perform any duties during the two months of his rehabilitation.
6. Despite Durkin not receiving clearance from his PCP to return to work yet, Durkin did indeed return to work two months before his PCP released him to do so, due to monetary hardship and his ability to find suitable employment and improvements in his

physical condition after successfully completing the two (2) months of Physical therapy as prescribed by his Doctor.

7. This Lawsuit includes evidence which corroborates Durkins claim, including Prescriptions by his Doctor forbidding him to work and again permitting him to work again with limitations that prevent him to return to work as a Driver with Flynn's, notes from the Physical Therapy sessions signed by the caregivers and a copy of The Departments own Claim Details which is the basis for the claims award amount requested in this Lawsuit.
8. The Department continuously neglected to acknowledge any of the evidence contained in this complaint sent by Plaintiff Durkin and which is included with this filing. This includes copies of his Doctors Prescriptions and his Physical Therapy notes mentioned above proving incapacitation and indeed the Department even mocked him by saying they never received this information on one occasion, despite Durkin doing so on more than 3 occasions – all to different addresses during the Appeals process of the Department, as requested by the Department. The Department's Secretary, Ms. Jennifer Berrier stated remorselessly on live television on March 3, 2022 in an interview with Pittsburgh affiliate CBS KDKA Reporter John Shumway that the Department had, and I quote, "lost, misplaced and has no idea what happened to more than 6 Billion dollars in the last 24 months," so the Plaintiff is not surprised at the sort of negligence and mismanagement of his claim he has experienced at the hands of these incompetent and morally bankrupt Bureaucrats.

In conclusion, Plaintiff hopes, prays and requests that the Court can find within its heart to ease Plaintiffs financial suffering he has experienced by these hapless bureaucrats in his beloved Commonwealth. Plaintiff was denied Medical Insurance coverage during his rehabilitation and had to pay for much of his treatment himself, which he hopes to reimburse himself and his spouse of 37 years for upon winning this lawsuit.